C. B. Display Service, Inc. *and* Billy Floyd Stephens.

Local #631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Billy Floyd Stephens. Cases 31-CA-9090 and 31-CB-3318

March 22, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On August 19, 1980, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found, *inter alia*, that Respondent Union had violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Ronny Stevens in June 1979 from its exclusive hiring hall to Respondent Employer because Stevens did not reinstate his lapsed union membership in a situation where Respondents had no valid union-security agreement. The Administrative Law Judge also found that, by demanding that Stevens pay to reinstate his membership as a condition to referral, Respondent Union independently violated Section 8(b)(1)(A) of the Act. Lastly, the Administrative Law Judge found that Respondent Employer had violated Section 8(a)(3) and (1) of the Act in June 1979 by knowingly acquiescing in Respondent Union's illegal conduct and refusing to employ Stevens.

To remedy these violations, the Administrative Law Judge recommended that Respondents be ordered to cease and desist from their unlawful conduct. The Administrative Law Judge also recommended that Respondents be ordered jointly and severally to make Stevens whole for any loss of wages and other benefits resulting from the unlawful refusal to refer and hire him. The Administrative Law Judge recommended, however, that the backpay award comprehend only the amount of money Stevens normally would have earned as wages and other benefits from June 15, 1979, the date he should have begun work, until the date he normally would have been laid off or terminated at the completion of the job for which he should have been hired, less net earnings during that period. The Administrative Law Judge expressly did not order that Respondent Union be ordered to refer Stevens or that Respondent Employer be ordered to hire him to any further jobs. And the Administrative Law Judge further denied the General Counsel's request that Stevens be reimbursed for the reinitiation fee and a month's dues that he eventually paid in November 1979 as a condition of being referred out by Respondent Union. While no party has excepted to the unfair labor practices found regarding Ronny Stevens, the General Counsel excepts to certain aspects of the Administrative Law Judge's proposed remedy for these violations. We find merit in certain of these exceptions.

1. The General Counsel has excepted to the Administrative Law Judge's failure to recommend that Respondent Union be ordered to give written notice to Respondent Employer with a copy to Ronny Stevens that it has no objection to the hiring of Stevens. We find merit in the General Counsel's exception since the Board has consistently required that such notice be given in factually similar cases.[2]

2. As noted, the Administrative Law Judge limited the backpay awarded to Ronny Stevens to the amount of money less net earnings that he would have earned in wages and benefits from June 15, 1979, until the date upon which he normally would have been laid off or terminated from the job for which he should have been hired by Respondent Employer. The Administrative Law Judge presumably predicated his backpay award on his finding that Stevens was ordinarily hired on a job-to-job basis and was laid off or terminated at the end of each job. The General Counsel argues, however, that Respondent Union's backpay liability should not be tolled until 5 days after Respondent Union gives notice that it has no objection to the hiring of Stevens. We find merit in this exception which is in

[1] The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] See, e.g., *Millwright and Machinery Erectors Local Union No. 740, District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Tallman Constructors, a Joint Venture)*, 238 NLRB 159 (1978); *Construction and General Laborers' Union Local 304, Laborers' International Union of North America, AFL-CIO (Wells and Kelly Steel Form Erection Service)*, 191 NLRB 764 (1971).

accord with Board precedent.[3] The fact that the job for which Stevens was denied referral on June 15, 1979, was short term does not end Respondent Union's liability for subsequent jobs for which Stevens may have been hired but for the unlawful condition that he reinstate his union membership. Respondent Union's violation is a continuing one since it has not yet notified Stevens and Respondent Employer that Stevens' entitlement to employment may not be conditioned on his reinstating his union membership. Further, we conclude that Respondent Employer's backpay liability must run until it offers Stevens employment.[4]

3. The General Counsel has excepted to the Administrative Law Judge's failure to recommend that the Board order Respondent Union to reimburse Ronny Stevens for the reinitiation fee and monthly dues he paid Respondent Union in November 1979. We find merit in the General Counsel's exception.

The Administrative Law Judge found that, in June 1979, Respondent Union unlawfully refused to refer Ronny Stevens for employment. The Administrative Law Judge found that, although Stevens offered to pay a service fee, Respondent Union demanded that he pay a union membership reinitiation fee of $150 plus a month's dues to obtain an employment referral. Stevens refused to pay the fees demanded and was not referred for employment. In November 1979, Stevens returned to the union hiring hall to obtain an employment referral. When he tendered the service fee, the union agent repeated the unlawful condition stated in June. At that time, Stevens agreed to pay the reinitiation fee and dues and, in fact, did so.

In refusing to order that Respondent Union reimburse Stevens for the fees he paid in November 1979, the Administrative Law Judge noted that the complaint alleged only violations taking place in June 1979 and not in November 1979. We conclude, however, that reimbursement of the reinitiation fee and a month's dues paid in November is appropriate and necessary to remedy the June violations alleged and found. That 5 months passed before the Union's unlawful June demand was satisfied does not diminish the propriety of this reimbursement. The Order's fitness is not predicated on finding a separate November 1979 violation but instead is necessary to remedy the violation found in the June demand for such money.[5] Accordingly, we shall order Respondent Union to reimburse Stevens for the funds he paid in November 1979 plus interest as stated in the remedy section of this Decision.

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist therefrom and to take certain affirmative action to effectuate the policies of the Act.

Having found that Respondent Union unlawfully refused to refer Ronny Stevens to employment and that Respondent Employer unlawfully acquiesced in Respondent Union's action and pursuant thereto refused to hire him on June 15, 1979, we shall order that Respondent Union notify Respondent Employer in writing, and furnish a copy to Stevens, that it has no objection to the employment of Stevens. Respondent Employer shall also be ordered to offer Stevens employment in the job for which he would have been hired absent the discrimination. Respondents shall be ordered jointly and severally to make Stevens whole for any loss of wages and benefits resulting from Respondents' unlawful refusal to refer and hire him. As stated above, in the case of Respondent Union, its backpay liability shall terminate 5 days after it notifies Respondent Employer and Stevens that it has no objection to the employment of Stevens, and, in the case of Respondent Employer, its backpay liability shall terminate on the date that Stevens is offered employment.[6] The amount of backpay shall

[3] See, e.g., *International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers, Local 75, AFL-CIO (Bob C. Keith, an Individual Proprietor d/b/a Tyler Reinforcing)*, 232 NLRB 1194 (1978); *Barnard and Burke, Inc., Construction Division*, 238 NLRB 579 (1978).

[4] Cf. *Conductron Corporation, a subsidiary of McDonnell Douglas Corporation*, 183 NLRB 419, 429 (1970).

As noted, the Administrative Law Judge concluded that Respondent Employer hired Stevens on a job-to-job basis. Nonetheless, it is not uncommon in the industry that an employee will be transferred from a completed project to a new one. Hence, while we are aware that, even absent unfair labor practices, Stevens might have been let go in the normal course of business at the end of the job, we are not convinced the record clearly demonstrates this. Nor does the record show that if Stevens had been terminated at the end of the job he would not have been later referred and hired during the backpay period set out above. These are matters more aptly left to the compliance stage of this proceeding. See, generally, *H. S. Brooks Electric, Inc., K & F Electric Co., Inc., and Waldemar Nikolai, their agent*, 233 NLRB 889 (1977); *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 576 (Westfield Thriftway Supermarket)*, 201 NLRB 922 (1973); *Petersen Construction Corp., et al.*, 134 NLRB 1768, 1773 (1961).

[5] See, e.g., *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Morris Draying Company)*, 195 NLRB 957 (1972); *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (SeaLand of California, Inc.)*, 197 NLRB 125 (1972).

[6] We cannot agree with Member Jenkins that the remedy set forth in *Sheet Metal Workers' Union Local 355, Sheet Metal Workers' International Association, AFL-CIO (Zinsco Electrical Products)*, 254 NLRB 773 (1981), is applicable in the circumstances of this case. In *Zinsco*, the Board modified its remedy in cases where a union acts "in violation of Section 8(b)(1)(A) and (2) of the Act, and there is no culpability on the part of the employer." The Board provided in *Zinsco* that the respondent union would be required to make the unlawfully discharged employee whole for all losses suffered as a result of the union's discrimination against him

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be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[7]

Having also found that Respondent Union, in June 1979, unlawfully refused to refer Stevens unless he paid a reinitiation fee and a month's dues and that Stevens paid these fees in November 1979, we shall order that Respondent Union refund to him any money paid as a result of the unlawful demand with interest computed as provided in *Florida Steel Corporation, supra*.[8]

Respondent Employer shall be ordered to preserve and, upon request, make available to the Board or its agents any and all records necessary to analyze the amount of backpay due.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set out in full below, and hereby orders that:

A. Respondent Local #631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Las Vegas, Nevada, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to dispatch Ronny Stevens or any other applicant for employment from its exclusive hiring hall for employment with C. B. Display Service, Inc., or any other company that uses such hiring hall, because Ronny Stevens or such other applicant for employment fails to reinstate his membership in said Union, under circumstances where there is no valid union-security clause in effect.

(b) Telling Ronny Stevens or any other applicant for employment from its exclusive hiring hall that he will not be dispatched unless he reinstates his membership in said Union.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Notify C. B. Display Service, Inc., in writing, with a copy furnished to Ronny Stevens, that Respondent Union has no objection to the employment of Ronny Stevens.

(b) Jointly and severally with C. B. Display Service, Inc., make Ronny Stevens whole for any loss of wages or other benefits he may have suffered as a result of the discrimination against him in the manner set forth in the section of the Board's Decision entitled "The Remedy."

(c) Refund to Ronny Stevens any money paid to Respondent Union as a result of its unlawful demand for the payment of a reinitiation fee and a month's dues in the manner set forth in the section of the Board's Decision entitled "The Remedy."

(d) Post at its Las Vegas, Nevada, business offices, hiring hall, and meeting places copies of the attached notice marked "Appendix A."[9] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent Union's representative, shall be posted by Respondent Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(e) Deliver to the Regional Director for Region 31 signed copies of said notice in sufficient number to be posted by C. B. Display Service, Inc., in all places where notices to employees are customarily posted.

(f) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

B. Respondent C. B. Display Service, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

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until the employee is either reinstated by the employer or obtains substantially equivalent employment elsewhere.

In contrast to the situation in *Zinsco*, here there is "culpability on the part of the employer." Thus, in the instant case, the Employer was named as a Respondent and was found to have violated Sec. 8(a)(3). As part of the remedy for that violation, we are requiring Respondent Employer to offer employment to the discriminatee, Ronny Stevens. Under these circumstances, we believe that Respondent Union's backpay liability should terminate 5 days after it withdraws its objection to the employment of Stevens, as provided above. If at that point Respondent Employer refuses to remedy its own unfair labor practice and employ Stevens, we believe that it would be inequitable to continue to hold Respondent Union liable for backpay when it has willingly ceased its past discrimination. Where there is no respondent employer obligated to employ the discriminatee, *Zinsco* properly holds that we must look to the respondent union as the only entity capable of making the injured employee whole. But we decline to extend the *Zinsco* remedy to a situation where, as here, an employer is named as a respondent and is under a remedial duty to employ the discriminatee.

[7] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Jenkins would compute the interest due on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146, 148 (1980).

[8] *Isis Plumbing, supra.*

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(a) Acquiescing in the refusal of Local #631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to dispatch Ronny Stevens or any other applicant for employment from its exclusive hiring hall because Ronny Stevens, or such other applicant for employment, fails to reinstate his membership in said Union, under circumstances where there is no valid union-security clause in effect, or, pursuant to such acquiescence, refusing to hire Ronny Stevens or such other applicant for employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with Local #631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, make Ronny Stevens whole for any loss of wages or other benefits he may have suffered as a result of the discrimination against him in the manner set forth in the section of the Board's Decision entitled "The Remedy."

(b) Offer employment to Ronny Stevens in the job for which he would have been hired absent discrimination.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Las Vegas, Nevada, facility copies of the attached notice marked "Appendix B."[10] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent Employer's authorized representative, shall be posted by Respondent Employer immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to insure that said notices are not altered, defaced, or covered by any other material.

(e) Deliver to the Regional Director for Region 31 signed copies of said notice in sufficient number to be posted by the above-named Union in places where notices to members are customarily posted.

(f) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent Employer has taken to comply herewith.

IT IS FURTHER ORDERED that those allegations in the complaint as to which no violations have been found be, and they hereby are, dismissed.

MEMBER JENKINS, dissenting in part:

I agree with my colleagues that Respondent Union and Respondent Employer violated the Act by their actions taken against Ronny Stevens in June 1979, and that each Respondent should be ordered to remedy the violations found in this proceeding. Contrary to my colleagues, however, I would not terminate Respondent Union's backpay liability 5 days after its notification to Respondent Employer and Ronny Stevens that it has no objection to Stevens' hire. In *Sheet Metal Workers' Union Local 355, Sheet Metal Workers' International Association, AFL-CIO (Zinsco Electrical Products)*, 254 NLRB 773 (1981), the Board held that "the proper and effective realization of the statutory policy . . . requires that a transgressor should bear the burden of the consequences stemming from its illegal acts." The majority does not dispute that Respondent Union unlawfully refused to refer Ronny Stevens for employment in June 1979 and that this refusal to refer caused Ronny Stevens not to be hired by C. B. Display. While Respondent Union was the motivating force in Ronny Stevens' failure to secure employment with C. B. Display, my colleagues allow Respondent Union to escape further backpay liability by giving notification that it has no objection to Stevens' hire. However, since it was Respondent Union's initial refusal to refer that set in motion the chain of events that led to Stevens not being hired, I would not toll Respondent Union's liability for backpay 5 days after tendering the appropriate notices but thereafter would hold it secondarily liable to remedy the illegal actions.[11] In all other respects, I agree with my colleagues' decision.

[10] See fn. 9, *supra*.

[11] See my partial dissenting opinion in *Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club*, 260 NLRB 1088 (1982).

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to dispatch Ronny Stevens or any other applicant for employment from our exclusive hiring hall for employment with C. B. Display Service, Inc., or any other

company that uses such hiring hall, because Ronny Stevens or such other applicant for employment fails to reinstate his membership in our Union, under circumstances where there is no valid union-security clause in effect.

WE WILL NOT tell Ronny Stevens or any other applicant for employment from our exclusive hiring hall that he will not be dispatched unless he reinstates his membership in our Union.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL jointly and severally with C. B. Display Service, Inc., make Ronny Stevens whole by paying him backpay, plus interest.

WE WILL make Ronny Stevens whole by refunding to him the reinitiation fee and a month's dues we demanded he pay to be referred to employment.

LOCAL #631, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT acquiesce in the refusal of Local #631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to dispatch Ronny Stevens or any other applicant for employment from its exclusive hiring hall because Ronny Stevens or such other applicant for employment fails to reinstate his membership in said Union, under circumstances where there is no valid union-security clause in effect, nor will we, pursuant to such acquiesence, refuse to hire Ronney Stevens or such other applicant for employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL offer employment to Ronny Stevens in the job for which he would have been hired absent discrimination.

WE WILL jointly and severally with said Union make Ronny Stevens whole by paying him backpay, plus interest.

C. B. DISPLAY SERVICE, INC.

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: This case was heard by me in Las Vegas, Nevada, on January 29, 1980. The charges in Cases 31-CA-9090 and 31-CB-3318 were filed on June 18, 1979, by Billy Floyd Stephens, an individual. An order consolidating those cases and a complaint issued on September 18, 1979. The complaint alleges that C. B. Display Service, Inc., herein called the Company, violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, herein called the Act, and that Local No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, violated Section 8(b)(1)(A) and (2) of the Act.

Issues

The primary issues are

1. Whether the Union violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Ronny Stevens and Billy Stephens for employment with the Company from the Union's exclusive hiring hall because those individuals were not members in good standing of the Union.

2. Whether the Company violated Section 8(a)(3) and (1) of the Act oy acquiescing in the Union's conduct and refusing to hire those individuals.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs which have been carefully considered were filed on behalf of the General Counsel and the Union.

Upon the entire record of the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, an Illinois corporation with an office and principal place of business in Las Vegas, Nevada, is a service contractor engaged in the business of installing exhibits at convention centers. The Company annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of Nevada and annually derives gross revenues in excess of $500,000. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Company and the Union are parties to a collective-bargaining agreement that is effective from April 1, 1976, through April 1, 1981, and which covers such employees as display men, decorators, and exhibit builders. Nevada is a right-to-work State and the contract does not contain a union-security clause. The contract contains an exclusive hiring hall provision. The Company obtains its employees through referrals from the hiring hall pursuant to that provision.[1] The hiring hall provision of the contract states in part:

> . . . the selection of workmen for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements.

The contract provides and the practice of the parties is that an employer can request an employee by name and that employee will be referred by the Union if the employee had been laid off or terminated by the employer within 270 calendar days before the request.

The services of the hiring hall are available to applicants if the applicant is a member of the Union or if the applicant pays a service fee (referred to as a dobie fee) for the use of the hall. At the times material herein the dobie fee was $17 and a dobie fee permit was valid for 30 days from the date of payment. During December and January of each year between 800 and 1,000 people pay dobie fees. During the remainder of the year about 450 people pay such fees each month.

On June 14, 1979, the Company requested that the hiring hall refer Ronny Stevens and his three brothers, Billy, Mark, and Austin Stephens, for employment with the Company at the Las Vegas convention center at 8 a.m. on June 15, 1979. Ronny Stevens and Billy Stephens were not referred by the Union or hired by the Company. The complaint alleges that the failure to refer and hire constituted a violation of the Act.[2]

B. *The Incidents Involving Ronny Stevens*

1. The facts

Ronny Stevens worked as a convention display laborer for the last 5 or 6 years on a show-by-show basis. During that time he has worked for the Company and for other employers. For each show he has been referred from the hiring hall on the basis of a request from the employer. Sometime in 1978 he became a member of the Union. Prior to his membership he paid dobie fees and received referrals for work on the basis of his dobie permit. At the end of 1978, he stopped paying union dues and 3 months later he was suspended from the Union for nonpayment.

For sometime before June 1979, Ronny Stevens was away from the Las Vegas area. On June 10, 1979, he returned to Las Vegas and on the following day he called Dennis Birsa, the assistant secretary-treasurer of the Company,[3] to see whether he could obtain employment with the Company. Birsa told him that a convention was coming in on June 14 or 15, 1979, but that he did not know when the freight would arrive. On June 13 Ronny Stevens went to Birsa's office. He was accompanied by his brother Mark Stephens. Birsa told them that he had them on a callout list which he would send to the Union and that they could start work on June 14 or 15. From there Ronny Stevens and Mark Stephens went to the union referral hall. They arrived there about 1 p.m. The ordinary procedure for a nonmember of the Union who does not have a current dobie receipt is to go to the window in the union office, pay his dobie fee, and receive a current dobie receipt. The receipt is then taken to the dispatch window. If the applicant has been requested by an employer or is otherwise eligible for immediate referral the dispatcher then gives a referral slip to the applicant. Ronny Stevens went to the window at the union office and spoke to acting dispatcher Gladys Williamson.[4] Ronny Stevens told Williamson that he wanted to pay his dobie fees and that he was on the Company's callout list. She asked him for his last dobie receipt and he showed it to her. She then said that he had to pay a reinitiation fee of $150 plus 1 month's dues because he was a member and that he could not go to work until he paid it. He said that he did not have the money and she repeated that he could not go to work until he paid.

On the following day, June 14, Ronny Stevens called Birsa and asked whether he should come to work that day or the next day. He did not tell Birsa what had occurred at the union hall the day before. Birsa replied that the freight had not come in but that they could go to work Friday morning at 8 o'clock Also on June 14, Birsa sent a written request that 16 named individuals, including Ronny Stevens and his 3 brothers, be dispatched for employment with the Company at the convention center at 8 a.m. on June 15.

At 7:45 a.m., on June 15, Ronny Stevens and his brothers Billy, Austin, and Mark Stephens went to the convention center and spoke to Birsa. Ronny Stevens told Birsa that he (Ronny) and Billy Stephens were not allowed to pay their dobie fees and could not get referrals. He told Birsa that he tried to pay his dobie fees but as he was a suspended member the Union required him to pay a reinitiation fee plus a month's dues in order to go to work and he could not afford to do that. He also told Birsa that Austin Stephens had been allowed to pay his dobies but had not been given a referral and that Mark Stephens had been allowed to pay his dobies and

[1] The parties stipulated that the Union operates an exclusive hiring hall.

[2] Mark Stephens was referred and was hired. The complaint does not allege that Austin Stephens was discriminated against. Counsel for the General Counsel stated on the record that Austin was not named in the complaint because he did not qualify under the collective-bargaining agreement for reference, referral, or priority referral.

[3] It was stipulated, and I find, that Birsa was an agent of the Company within the meaning of Sec. 2(13) of the Act.

[4] It was stipulated, and I find, that Gladys Williamson was the Union's acting dispatcher and was an agent of the Union within the meaning of Sec. 2(13) of the Act.

had been given a referral to go to work. He asked Birsa whether Birsa could still use them. Birsa replied that he had received a phone call from James Rice[5] who told him that people without referrals were not to be put to work. Mark Stephens went to work. Ronny Stevens and his other two brothers then left.

The next time that Ronny Stevens worked at the convention center was in mid-November 1979.[6] At that time another employer, Greyhound Exposition Services, requested the referral hall to dispatch Ronny Stevens. He went to the hall and spoke to Gladys Williamson. He told her that he wanted to pay his dobie fees and she replied that he would have to pay a reinitiation fee of $150 plus 1 month's dues of $19. He agreed to make those payments in three installments, and she gave him the dispatch. Later he made those payments.

2. Analysis and conclusions

The applicable law with regard to the Union's responsibility is set forth in *Bricklayers' and Stonemasons' International Union, Local No. 8, B.M. & P.I.U. of America (California Conference of Mason Contractors Associations, Inc.)*, 235 NLRB 1001, 1005 (1978),[7] in which the Board adopted the Decision of the Administrative Law Judge which held:

> An exclusive hiring hall gives a great deal of authority over the hiring process to a union, but such authority is not in itself violative of the Act.[7] However, under such a hiring hall system a union cannot lawfully refuse to refer an applicant because of union considerations unless that refusal is based on a valid union-security clause.[8] A union may lawfully refuse to refer an applicant in a situation where that union could, pursuant to a lawful union-security clause, require immediate discharge of that employee for failure to pay dues under a contract governing his employment,[9] but the applicant cannot be required to pay back dues for a period when dues were not validly required as a condition of employment.[10]

[7] *Local 375, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Los Angeles-Seattle Motor Express]* v. *N.L.R.B.*, 365 U.S. 667 (1961).

[8] *Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District, AFL-CIO (Isthmian Lines, Inc.)*, 202 NLRB 657 (1973), enfd. 496 F.2d 1363 (C.A. 5, 1974). In addition, referral may be conditioned on the payment of a reasonable nondiscriminatory hiring hall fee. *Boston Cement Masons and Asphalt Layers Union No. 534 (Duron Maguire Eastern Corp.)*, 216 NLRB 568 (1975), remanded 526 F.2d 1189 (C.A. 1). However, there is no contention in this case that Waters failed to pay any "dobie" fees required of him.

[9] *Mayfair Coat & Suit Co.*, 140 NLRB 1333 (1963).

[10] Cf. *Fishermen & Allied Workers' Union, Local 33, International Longshoremen's and Warehousemen's Union (S. G. Guiseppe Fishing, Inc.)*, 180 NLRB 851 (1970), enfd. 448 F.2d 255 (C.A. 9, 1971); *Bricklayers', etc., Local No. 11 (Rochester Floors, Inc.)*, 221 NLRB 133 (1975).

In the instant case the Company and the Union maintained an exclusive hiring hall arrangement both by contract and by practice. Under the terms of the contract the Union could not use union considerations as a basis for referral. The dobie fee arrangement for the use of that hall was lawful. However, Ronny Stevens tendered his dobie fees and they were rejected. There is no contention that he was denied referral because of a failure to pay those dobie fees. The uncontradicted evidence establishes that Ronny Stevens was denied referral because he was a suspended union member and he refused to pay a $150 fee to reinstate him to membership and a month's dues. That denial of referral was based on union considerations. There was no union-security clause in the contract.[8] By refusing to refer Ronny Stevens for employment with the Company on June 15, 1979, the Union violated Section 8(b)(1)(A) and (2) of the Act.

Assistant dispatcher Williamson's statement to Ronny Stevens on June 13, 1979, that Stevens could not go to work unless he paid the $150 reinitiation fee and the month's dues constituted a separate violation of Section 8(b)(1)(A) of the Act.

The applicable law with regard to the Company's responsibility is set forth in *Bechtel Power Corporation*, 223 NLRB 925, 933 (1976), enfd. 597 F.2d 1326 (10th Cir. 1979), in which the Board adopted the decision of the Administrative Law Judge that held:

> Where an employer has contracted to use and does use a union's exclusive hiring hall, the employer will be held to have violated the Act when the union unlawfully refuses to refer an applicant because of union considerations.[18]

[18] *Castleman and Bates, Inc.*, 200 NLRB 477, enfd. 502 F.2d 1161 (C.A. 1, 1974). As the Second Circuit Court of Appeals held in *Morrison-Knudsen Company, Inc.*, 275 F.2d 914 (1960), cert. denied 366 U.S. 909 (1961):

> But regardless of the extent of their knowledge we agree with the Board that an employer may not avoid liability for violations of the Act by the hiring hall when he has turned over to it the task of supplying the men to be employed. The Local acted as agent for the petitioners in selecting the men to be hired. Its discriminatory acts, which unlawfully encourage membership in Local 545, are properly chargeable to the agent's principal as discriminatory acts by it.

In the instant case the Company undertook, both by contract and practice, to obtain employees through the Union's exclusive hiring hall. The Company is therefore responsible for the Union's unlawful refusal to refer Ronny Stevens for work with the Company. The Company knew that Ronny Stevens was not referred because he had not reinstated his membership. Birsa was told that by Ronny Stevens on June 15. By acquiescing in the

[5] It was stipulated, and I find, that James Rice was secretary-treasurer of the Union and was an agent of the Union within the meaning of Sec. 2(13) of the Act.

[6] The record does not indicate whether Ronny Stevens made any efforts to obtain work at the convention center between June 15 and mid-November 1979.

[7] See also *International Longshoremen's and Warehousemen's Union, Local 13 (Pacific Maritime Association)*, 228 NLRB 1383, 1385 (1977), enfd. 581 F.2d 1321 (9th Cir. 1978).

[8] Such a clause would have been unlawful if it existed because of Nevada's right-to-work law and Sec. 14(b) of the National Labor Relations Act, as amended.

Union's unlawful conduct and, pursuant thereto, refusing to employ Ronny Stevens on June 15, 1979, the Company violated Section 8(a)(3) and (1) of the Act.

C. *The Incidents Involving Billy Stephens*

Billy Stephens worked as a convention decorator for the Company and other employers for the last 6 years. He has never been a member of the Union, but he has been dispatched from the hiring hall on the basis of a dobie permit on many occasions when he was requested by an employer. The incidents in question here took place in mid-June 1979. On at least 20 occasions prior to that date, he went to the referral hall and paid his dobie fees. On some of those occasions it was Susan Thom[9] who accepted the fees on behalf of the Union. There is no contention that he had difficulty in paying the fees or in receiving referrals before mid-June 1979. There is also no contention that he was prevented from paying his fees and receiving referrals after the mid-June 1979 incident. In early December 1979, he was informed that an employer had called for him by name and he went to the union hall, paid his dobie fees, and picked up his clearance. On that occasion he spoke to Susan Thom. Thom asked him for his previous receipt and he said that he had lost it. She said that it was all right and asked him for the dobie fee. He paid her and she gave him a receipt. From there he went to the dispatch window and received his clearance. Billy Stephens acknowledged in his testimony that in the past he had been permitted to pay his dobie fees even though he did not have his receipt for the last payment.

The General Counsel contends that on or about June 13, 1979, Billy Stephens tendered his dobie fee to Susan Thom and that Thom refused to accept it with the result that Billy Stephens was not dispatched for work with the Company on June 15. the Union contends that Billy Stephens did not tender his dobie fee and that the Union never rejected that fee. If the Union's contention is correct there was no violation of the Act as to Billy Stephens. The dobie fee system was unlawful and if an applicant for employment who is not a member of the Union fails to tender the fee for a current dobie permit the Union has no obligation to dispatch him. Billy Stephens had been using the dobie permit system for many years and there can be no contention that he was unaware of the fact that a dobie fee had to be tendered before the dispatch would be made. There is a sharp conflict in testimony on the issue of whether Billy Stephens tendered his dobie fee on or about June 13, 1979.

Billy Stephens testified to the following incident. He heard that he and his brothers were being called out by the Company for referral from the hiring hall. On June 13 or 14[10] he went to the hiring hall to pay his dobie fee and pick up his clearance. He went to the front window and spoke to Susan Thom.[11] He told Thom that he had lost his last receipt and she told him to talk to acting dispatcher Gladys Williamson at the dispatch window. He went to the dispatch window and told Williamson that he could not find his last receipt. She told him to go back to the front window and pay his dobie fees. Instead of going back to the front window he left the hiring hall and tried to find his past receipt. He was unable to do so. He went back to the hiring hall and spoke to Thom a second time. He told her that he could not find his last receipt but that he wanted to pay his dobie fee anyway. He also told her that he had talked to the dispatcher. Thom told him that he would not be allowed to pay his fees. He asked her why and she would not give him any reason. He then went back to the dispatch window and asked Williamson for clearance. Williamson asked him for his current receipt and he said he did not have one. Williamson then said that she could not give him a referral to go to work. At that point he left the union hall.[12]

Thom testified that she did not remember any specific incident involving Billy Stephens. She adamantly insisted in her testimony that she never refused to accept dobie fees from anyone.[13]

There is no evidence that Williamson did anything to unlawfully discriminate aqainst Billy Stephens. According to Billy Stephens' testimony, Williamson told him to go back to the front window and pay his dobie fee and she later told him that she would not refer him unless he had a current receipt. The critical question is whether Thom refused to accept his dobie fee.

Thom was a convincing witness and in addition many of the surrounding circumstances lend credence to her testimony. Billy Stephens had been paying dobie fees and using the hiring hall for years before the incident in question and there is no indication that he had had any problems. He acknowledged that he was permitted to pay his dobie fees even when he did not have his prior receipt. After the incident in question he was again permitted to pay his dobie fees and again there was no problem. Mark Stephens testified that in mid-June he had difficulty in paying his dobie fees and in receiving a referral because he could not find his prior receipt. However, he could not recall who it was who gave him the difficulty and he was permitted to pay the dobie fee and he did receive his referral so that he could go to work for the Company on June 15. Thom credibly testified that her practice was to ask for the prior receipt in order to assist her in finding the applicant's records but that if the person did not have that receipt she wrote down the name and social security number, found the information on the office computer, and gave that person a current receipt. She credibly averred that she sometimes sent the applicant to the dispatch window to obtain some of the records but the applicant did not have to possess a prior receipt in order to obtain a current dobie permit. Billy Stephens testified that he could think of no reason why

[9] Thom was an office clerical and bookkeeper for the Union and part of her duties was to collect dobie fees.

[10] He testified that he went into the hall on Wedensday, June 14. Wednesday was June 13.

[11] He testified that he could only recall her first name. However, later in his testimony he identified the person he spoke to as one of the people sitting in the hearing room. That person was Susan Thom.

[12] As is set forth in more detail above with regard to the incident involving Ronny Stevens, Billy Stephens went to the convention center on June 15 where he was denied employment by Birsa.

[13] She averred that the only exception to that was a situation where an applicant had paid the dobie fees within the past 30 days and there was no need to pay an additional amount because a valid dobie permit was outstanding.

the prior receipt would be useful to the Union other than to determine whether payment had been made within the last 30 days. He averred that he was under the impression that the Union discriminated against him because his brother Austin got into an argument with one of the girls at the union hall. However, Austin was allowed to pay his dobie fees even though Austin was not given a referral.[14] There is no contention that Billy Stephens was denied referral because the Union had a dispute with his brother Ronny Stevens. In the case of Ronny Stevens, the Union was attempting to require a suspended member to reinstate his membership before referral. Billy Stephens had never been a member and he was in the same category as some 450 other nonmember applicants who used the dobie fee system at that time of the year.

Billy Stephens testified that on occasions prior to mid-June 1979 he tried to pay his dobie fee to Thom when he did not have his last receipt; that Thom then would tell him to talk to the dispatcher; that the dispatcher would tell him to pay his dobie fee; and that Thom would then take his dobie fee. However, he testified that in mid-June when he tried to pay his dobie fee to Thom without having his prior receipt she told him to talk to the dispatcher, and when the dispatcher told him to pay his dobie fee he left the union hall to look for his receipt. In light of his prior experience it is difficult to understand why Billy Stephens left the union hiring hall to look for his prior receipt instead of immediately going back to Thom and tendering her the dobie fee. His testimony that he left the hiring hall to look for his last receipt shed some cloud on his credibility.

In sum, I credit Thom rather than Billy Stephens and I find that the General Counsel has not established by a preponderance of the credible evidence that Billy Stephens tendered his dobie fee on June 13 or 14, 1979, or that the Union refused to accept his dobie fee at that time. I therefore recommend that the portion of the complaint that alleges that the Company and the Union violated the Act with regard to their treatment of Billy Stephens be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Union and the Company, as set forth in section III, above, occurring in connection with the business operations of the Company set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act and that the Company has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, I recommmend that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union unlawfully refused to refer Ronny Stevens to employment and that the Company unlawfully acquiesced in the Union's action and pursuant thereto refused to hire him on June 15, 1979, I recommend that the Union and the Company be ordered jointly and severally to make him whole for any loss of wages and other benefits resulting from that refusal to refer and hire him by payment to him of a sum of money equal to the amount he normally would have earned as wages and other benefits from June 15, 1979, until the date upon which he normally would have been laid off or terminated at the completion of the job for which he should have been hired, less net earnings during that period. The amount of backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the mannner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[15]

As the evidence established that Ronny Stevens was hired by the Company only on a job-to-job basis and that he was laid off or terminated at the end of each job, I do not recommend that the Union be ordered to refer him or that the Company be ordered to hire him at this time. The cease-and-desist provisions of the proposed Order will proscribe any discrimination against him in the future.

The unfair labor practices found herein occurred in mid-June 1979. Counsel for the General Counsel, in her brief, argues that the Union should be required to reimburse Ronny Stevens for the $150 reinitiation fee and the monthly dues he paid the Union on or after mid-November 1979. In her brief, counsel for the General Counsel contends that the Union's mid-November actions were violative of the Act. The complaint alleges violations in mid-June 1979 and does not allege any violations in mid-November 1979, 5 months later. During the hearing there was no hint by the General Counsel that reimbursement of moneys paid the Union in mid-November 1979 would be requested. There is no indication that the Union was given any notice that it would have to meet that contention during the hearing and there is no way of knowing whether that matter was fully litigated. I shall not recommend that the Union be ordered to make those payments to Ronny Stevens.

I further recommend that the Company be ordered to preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

[14] As is set forth above, Austin Stephens is not alleged as a discriminatee and the General Counsel acknowledged that he was not named in the complaint because he did not qualify for referral.

[15] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

3. By refusing to dispatch Ronny Stevens from its exclusive hiring hall for employment with the Company on June 15, 1979, because he did not reinstate his membership in the Union by payment of a $150 reinstatement fee and a month's dues, under circumstances where there was no valid union-security clause, the Union violated Section 8(b)(1)(A) and (2) of the Act.

4. By telling Ronny Stevens on June 13, 1979, that he would not be dispatched unless he made such payments, the Union violated Section 8(b)(1)(A) of the Act.

5. By acquiescing in the Union's unlawful refusal to refer Ronny Stevens and, pursuant thereto, refusing to hire him on June 15, 1979, the Company violated Section 8(a)(3) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]